IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or is not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case

1. **Writ Petition no. 899 (S/S) 2003**

Sanjay Kumar Sharma -----petitioner.

Vs.

State of Uttaranchal and another. ------Respondents.

With

2.Writ Petition no. 6583 (S/S) 2001

Dinesh Chandra and 9 ors. ------Petitioners.

Vs.

State of Uttaranchal and 13 ors. ----Respondents.

Approved fro reporting

Not approved for reporting

Date of Decision August 2,2005

Initial of Judge.

HIGH COURT OF UTTARANCHAL AT NAINITAL

1. <u>Writ petition no. 899 (S/S) 2003</u>

Sanjay Kumar Sharma S/o Sri Krishna Kumar,
Resident of 5/21, Purohitaan, Haldaur,
District Bijnour. ----petitioner.

Vs.

1. State of Uttaranchal through
   Secretary of Education, Uttaranchal, Dehradun,
2. Regional Joint Director of Education,
   Pauri Garhwal, Distt. Pauri Garhwal. ------Respondents.

Sri H.M. Raturi, learned counsel for the petitioner.
Learned Standing Counsel for respondent.

2. <u>Writ Petition no. 6583 (S/S) 2001</u>

(Old No. 53332 of 1999)

1. Dinesh Chandra S/o Sri Anusuiya Prasad,
   r/o Gram Chansil, P.O. Vishalkhan, Chamoli,
2. Upendra Sati S/o Sri Sachidanand,
   r/o Gram Devasthan P.O. Pohkeri, Chamoli,
3. Rajendra Prasad S/o Sri Murtiram Bahuguna,
   r/o Gram Dangi P.O. Radhudhar (Jankhindhar),
   District Tehari.
4. Kirtimani Raturi S/o Sri B.R. Raturi,
   r/o Gram Dharoji, P.O. Koshal (Cham)
   District Tehri.
5. Guru Prasad S/o Sri Mohan Prasad Sati,
   Near Treasury, Rudraprayag.
6. Rajkishore Lingwal S/o Sri Dayal Singh Lingwal,
   r/o Gram & P.O. Chokhri, Chamoli,
7. Vijendra Singh Panwar S/o Sri Bachan Singh Panwar,
   r/o Panwar Bhawan, Josiara, Uttarkashi,
8. Guna Nand S/o Sri Purshottan Dutt Pandy,
   r/o Gram Dangi P.O. Padhudhar (Jakhnidhar),
   District Tehri Garhwal,
9. Mayaram Chamoli S/o Sri C.M. Chamoli,
   r/o Gram Ratoli P.O. Khandogi,
   District Tehri Garhwal,
10. Kamlesh Kumar S/o Sri Sundarmani Pandey,
    r/o Gram Dangi P.O. Padhudhar,
    District Tehri Garhwal. -----Petitioners.

Vs.

1. State of U.P. through Secretary,
   Department of secondary Education,
   Govt. of U.P., Lucknow,
2. Addl. Director Secondary Education (Hills),
   Lucknow.
3. Regional Joint Director of Education,
   Garhwal Region, Pauri Garhwal,
4. Manoj Kumar Raturi S/o Harshdev Raturi,
   village Thapali Chaura P.O. Kikileshwar,
   Distt. Tehri Garhwal,
5. Padmendra Singh Rauthan S/o Mohan Singh Rauthan,
   village Dhingri Bachhansyum P.O. Kherakhal (Mowaun),
   Distt. Tehri Garhwal,
6. Vishal Mani S/o Sri Ahanand Mamgain,
   village Mayargaon, P.O. Maroragarh,
   Patti Palkot, Distt, Tehri Garhwal,
7. Kamaleshwar Prasad S/o Jyoti Prasad Nautiyal,
   village Baunsala, P.O. Pilakhi,
   Distt. Tehri Garhwal,
8. Prithvi Singh Rawat S/o Kundan Singh Rawat,
   Village & P.O. Subhash Nagar, Gopeshwar,
   Distt. Chamoli,
9. Budhi Prakash Raturi S/o Sri Munshi Lal,
   village Naithana Chauras, P.O. Kilkileshwar,
   Distt. Tehri Garhwal,
10. Girish Uniyal S/o Manohar Lal Uniyal,
    village Bilkodar P.O. Kirtinagar,
    Tehri Garhwal,
11. Purvanand Bangwal S/o Tashupati Prasad Bangwal,
    Bangwal Bhawan Near I.T.I.,
    Bhaktyane Srinagar Garghwal,
    Distt. Parui Garhwal,
12. Jeetpal Bisht S/o Raghubir Singh Bisht,
    village & P.O. Jagot,
    District Rudraprayag,
13. Manoj Kumar Uniyal S/o Sri Murti Ram Uniyal,
    village Rumdhar, P.O. Lalorikahal,
    District Tehri Garhwal,
14. Kuldeep Singh Chauhan S/o Sri Kripal Singh Chauhan,
    village Gairu Patty Chalansyan,
    P.O. Develgarh,
    Distt. Pauri Garhwal. ----Respondents.

Sri Rakesh Thapaliyal, learned counsel for the petitioner.
Learned Standing Counsel for respondent.

Hon'ble M.M. Ghildiyal, J.

Heard Sri H.M. Raturi, Adv. and Sri Rakesh Thapaliyal, Adv. for the petitioners and learned Standing Counsel for the respondents.

In both the writ petitioners, question of appointment of selected candidates in pursuance of the advertisement dated 21.10.1997 is under challenge, therefore both the writ petitions were clubbed and are being disposed of by a common judgment.

By means of writ petition no. 899(ss)2003, the petitioner has prayed to issue a writ, order or direction in the nature of mandamus commanding the respondents to appoint the petitioner on the post of Physical Training Instructor.

The submission of the petitioner is that the Regional Joint Director of Education, Garhwal Division, Pauri has issued an advertisement which was published on 21.10.1997 in daily newspaper "Danik Jagran" thereby inviting applications for the posts of Assistant Teacher (L.T. Grade) for various subjects including the Physical Training Instructor to be filled in various Govt. Inter Colleges and Govt. Higher Secondary Schools in Garhwal Division.

In pursuance of the said advertisement the petitioner who is eligible to be appointed as a physical Training Instructor, applied for the post of Physical Training Instructor. The posts were to be filled in accordance with the Rules known as U.P. Subordinate Educational (Trained Graduate Grade) Service Rules 1983 as amended time to time. Rule 15 of the aforesaid rule provides procedure for direct recruitment. For ready reference, Rule 15 is quoted hereunder:-

"Procedure for direct recruitment:-

(1) (a) the Regional Deputy Director of Education concerned shall in respect of the vacancies of both branches (Men's and Women's Branch) to be filled by direct recruitment,

advertise the vacancies subjectwise, alongwith the number of vacancies to be reserved for the candidates belonging to the Scheduled castes/Schedules Tribes and other categories of persons in at least two leading newspapers one having wide circulation in the region and the other in the State, and invite applications for direct recruitment in the pro forma given in Appendix "C". Such advertisement shall, inter alia, mention the pay and allowances relating to the posts, minimum academic qualifications for appointment thereto and such other information as may be considered necessary.

(2) The Regional Deputy Director of Education shall scrutinize the applications and shall cause the list of candidates to be prepared on the basis of quality points specified in Appendix D. The Regional Deputy Director of Education shall place the list alongwith the applications before the Selection Committee.

(3) These shall be Selection Committee for selection of candidates for appointment by direct recruitment comprising-

(i) appointing authority;

(ii) the Regional Deputy Director of Education or the Regional Inspectress of Girls Schools, who is not appointing authority.

(iii) Regional Assistant Director of Education (Basic)

The appointing authority shall be the Chairman.

(4) The Selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub rule (2) prepare subjectwise list of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the quality points complied under sub Rule (2). If two or more candidates obtain equal quality points, the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than twenty five percent) than the number of vacancies advertised under sub rule (1)."

Rule-8 the aforesaid Rules prescribed for the academic qualification for a candidate for direct recruitment to various posts. For the post of Assistant Master/Assistant Mistress (Physical Education), the following qualification is prescribed:-

"Bachelor Degree from a recognized University or a degree recognized by the Government as equivalent thereto and Diploma in Physical Education."

According to the petitioner in w.p. no. 899(ss)2003, he was fully qualified to the post of Assistant Masters (Physical Education), however, the respondents provided appointment to

the persons who got less quality points than the petitioner and thus appointments were made de-horse the Rules. Representations were preferred before the respondents. The last representation, which was filed by the petitioner, was of dated 10.06.2002 which was addressed to the Joint Director of Education Garhwal Mandal, Pauri in which the petitioner specifically stated that as per the procedure adopted by the respondents, the petitioner was entitled to get 46.15 quality point marks. Though the persons who have got less quality point marks have been provided appointment but the petitioner has not been provided appointment inspite of his achieving more quality points marks and, as such, he prayed that he is entitled for appointment. When no heed was paid towards the grievance of the petitioner, he was constrained to file the present writ petition.

This Court on 27.08.2003 while granting three weeks' time to learned Standing Counsel to file counter affidavit, directed the respondents to decide the representation of the petitioner. Thereafter a number of times, the learned Standing Counsel was granted time to file counter affidavit but the respondents did not care to file counter affidavit and the counter affidavit was filed only after when the respondent/ Joint Director of Education was directed by the Court to appear before this Court.

In the counter affidavit, which has been sworn by the Regional Joint Director of Education, Garhwal Mandal, the respondents have admitted that the petitioner had applied for the post of Assistant Teacher (Physical Training). In regard to this Court's order dated 27.08.2003 by which this Court directed the respondents to decide the representation of the petitioner, it is stated that in a Contempt Petition no. 99 of 2000, the record pertaining to the selection process, in

Pursuance to the advertisement dated 21.10.1997, was called for by the Court, therefore, the record was placed before this Court which was returned back to the respondents only on 17.03.2004. In para-5 of the counter affidavit, the joint Director of Education has submitted that after perusal of the record, when the record was received back, the claim of the petitioner for appointment was considered by the deponent in compliance of the Hon'ble Court's order and it was found that the petitioner was entitled to be appointed on the post of Assistant Teacher (Physical) but in view of the stay order passed in several writ petitions, the petitioner could not be appointed till date.

During the course of argument, leaned Standing Counsel has submitted that there is an order of stay in writ petition no. 6583 (ss) 2001 and in writ petition no. 303(ss)03. Learned Standing Counsel has informed the Court that the writ petition no. 303(ss)2003, alongwith the writ petition no. 1300(ss)03, has already been disposed of by this Court vide its order dated 26.06.2004 and while disposing of the writ petitions, this Court has given liberty to the petitioners the agitate their individual grievances by filing representations within three weeks after the receipt of the certified copy of the Court which shall be disposed of within a month by the respondents by a reasoned order. Now, of course, there is no order of this Court not to make appointments in writ petition no. 303(ss)2003.

Learned Standing Counsel has drawn my attention towards the order passed by High Court in writ petition no. 6583(ss)2001 (Old no. 53332 of 1999 before the Allahabad High Court). The petitioners in the aforesaid writ petition, aggrieved by the advertisement dated 21.10.1997 by which applications were invited for appointment to the post of Assistant Teachers in various subjects including Physical Training, preferred the aforesaid writ petition and prayed to issue relief to the affect

firstly, that a writ, order or direction of suitable nature be issued commanding the respondents to consider the petitioners for appointment as Assistant Teachers in L.T. Grade in pursuance to the advertisement issued by Regional Joint Director of Education, Garhwal Region, Pauri Garhwal as published in the news paper "Danik Jagranj" dated 21.10.1997 secondly, that to issue a writ, order of direction of suitable nature restraining the respondents from making any appointment on the post of Assistant Teachers in L.T. Grade in govt. Higher Secondary Schools of Garhwal Region in pursuance to the advertisement published in the newspaper "Dainik Jagran" dated 21.10.1997 without considering the petitioners candidature for such appointment. Perusal of the relief sought by the petitioners reveals that both the reliefs are contradictory in nature. On one hand the petitioners have prayed that they shall be considered and appointed as Assistant Teacher in pursuance of the advertisement dated 21.10.1997 and at the same time they have prayed that appointment should not be made to any person in pursuance to the advertisement dated 21.10.1997.

It is not clear from the writ petition, at any rate, that in which subjects the petitioners have applied for appointment to the post of Assistant Teacher LT Grade. In fact, the petitioners in the aforesaid writ petition had applied for one subject and they had grievance against the advertisement of 1997 by which posts of L.T. Grade Teacher in different subjects have been advertised, however they cannot seek relief to quash the whole advertisement, which ahs been published in relation to the different subjects. At the most, they could have prayed that the post of particular subject for which they had applied may not be filled.

Factual position is that in 1993, an advertisement was issued by the Education Department inviting applications for various posts. The petitioners have also applied in pursuance to that advertisement. In para-5 of the writ petition, the petitioners have stated that surprisingly no selection proceedings whatsoever were conducted in pursuance to the advertisement dated 06.10.1993. In fact, no intimation whatsoever, in this regard was issued to any of the candidate who had applied in pursuance to the advertisement nor the application fees deposited by any of the candidate was returned to them. Submission of the petitioners is that they had applied in pursuance to the advertisement dated 1993 and at that relevant time they were within the permissible age limits, however no selection was made by the Department and when in 1997 another advertisement was issued, most of the candidates have become overage. It is not disputed that they had not applied in pursuance of the advertisement issued by the Department in 1997. In any case, the petitioners cannot claim the relief for quashing of an advertisement or cannot claim not to make any appointment in pursuance to the advertisement issued in 1997 on the ground that they had applied in pursuance to the advertisement pertaining to the year 1993, though they had not applied in pursuance to the advertisement pertaining to the years 1997. Further the advertisement which was issued on 21.10.1997 was challenged by the petitioners in writ petition no. 6583(ss)2001, almost after two years, when the whole selection process was almost completed and, as such, I do not find it proper, at this stage, to stop the respondents from making appointments of the candidates who were selected in pursuance of the advertisement dated 21.10.1997.

In the aforesaid writ petition no. 6583(ss)2001, the Allahabad High Court on 23.11.1999 passed and order to the following effect:-

"Till the next date of listing it will be open to the respondents to complete the process of selection on the post of Assistant Teacher in L.T. Grade in govt. Higher Secondary Schools of Garhwal Region but no appointment shall be made. However, it will be open to the respondents to consider the appointment of the petitioners."

It appears that the writ petition was dismissed for want of prosecution. Lateron, restoration application was moved by the petitioners and the writ petition was restored to its original number alonwitht the interim order. But during this period when the petition was dismissed and lateron was restored, the respondents issued appointment letters to all selected candidates in pursuance to the advertisement dated 21.10.1997. Thereafter, again in the year 2002 and in 2003 the posts of L.T. Grade Teachers lying vacant in the State of Uttaranchal, were advertised and appointments have been made. The petitioners who were qualified to be appointed in pursuance to the advertisement pertaining to the year 1997 and who could not appointed on account of the mistake of the Department, which the Department realized lateron after going through the record and has admitted that they were entitled to be appointed, could not be provided appointment because of the stay order passed in writ petition no. 6583(ss)2001.

Since the petitioners in writ petition no. 6583(ss)2001 had not applied for their appointment in pursuance of the advertisement issued in 1997, they cannot claim relief to the extent that no appointment should be made in pursuance to the advertisement dated 21.10.1997. The petitioners in the aforesaid petition may make request by making representation to the Govt. that they had applied in pursuance of the advertisement

Pertaining to the year 1993 in which no selection was made by the Department and by the time when the next advertisement was issued in 1997, they had become overage and their case may be considered sympathetically for appointment and the Govt. may consider their grievances and may pass appropriate orders in the prevailing circumstances. In the circumstances aforesaid, the stay order granted on 23.12.1999 passed in writ petition no. 6583(ss)2001 is hereby vacated.

With these directions, the writ petition no. 6583(ss)2001 is finally disposed of.

For the reasons recorded above, the writ petition no. 899(ss)2003 is allowed. The respondents are directed to provide appointment to the petitioner of writ petition no. 899(ss)2003 on the post of Physical Training Instructor forthwith. No order as to costs.

Let a certified copy of this order may be placed in the connected writ petition.

(M.M. Ghildiyal, J.)

August 2,2005:
NCM: